

HOUSE SUBSTITUTE AMENDMENT NO. \_\_\_\_\_

for

HOUSE \_\_\_\_\_ AMENDMENT NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for House Bill No. 452, Pages 3, Section 538.205, Lines 17  
2 through 22, by deleting all of said lines and inserting in lieu thereof the following:

3  
4 " (3) "Employee", any individual who is directly compensated by a health care provider for  
5 health care services rendered by such individual."; and

6  
7 Further amend said bill and section, Page 3, Line 56, by inserting after all of said section and line  
8 the following:

9  
10 "538.210. 1. A statutory cause of action for damages against a health care provider for  
11 personal injury or death arising out of the rendering of or failure to render health care services is  
12 hereby created, replacing any such common law cause of action. The elements of such cause of  
13 action are that the health care provider failed to use that degree of skill and learning ordinarily used  
14 under the same or similar circumstances by members of the defendant's profession and that such  
15 failure directly caused or contributed to cause the plaintiff's injury or death.

16 2. (1) In any action against a health care provider for damages for personal injury arising  
17 out of the rendering of or the failure to render health care services, no plaintiff shall recover more  
18 than four hundred thousand dollars for noneconomic damages irrespective of the number of  
19 defendants.

20 (2) Notwithstanding the provisions of subdivision (1) of this subsection, in any action  
21 against a health care provider for damages for a catastrophic personal injury arising out of the  
22 rendering or failure to render health care services, no plaintiff shall recover more than seven hundred  
23 thousand dollars for noneconomic damages irrespective of the number of defendants.

24 (3) In any action against a health care provider for damages for death arising out of the  
25 rendering of or the failure to render health care services, no plaintiff shall recover more than seven  
26 hundred thousand dollars for noneconomic damages irrespective of the number of defendants.

27 3. (1) [~~Such limitation~~] This section shall also apply to any individual or entity, or their  
28 employees or agents that provide, refer, coordinate, consult upon, or arrange for the delivery of  
29 health care services to the plaintiff; and

30 (2) Who is a defendant in a lawsuit brought against a health care provider under this  
31 chapter, or who is a defendant in any lawsuit that arises out of the rendering of or the failure to  
32 render health care services.

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1       ~~[(3) No individual or entity whose liability is limited by the provisions of this chapter shall~~  
 2 ~~be liable to any plaintiff based on the actions or omissions of any other entity or person who is not~~  
 3 ~~an employee of such individual or entity whose liability is limited by the provisions of this chapter.~~

4  
 5 ~~Such limitation shall apply to all claims for contribution.]~~

6       4. No health care provider whose liability is limited by the provisions of this chapter shall  
 7 be liable to any plaintiff based on the actions or omissions of any other entity or person who is not  
 8 an employee or agent of such health care provider.

9       5. This section shall apply to all claims for contribution.

10       6. In any action against a health care provider for damages for personal injury or death  
 11 arising out of the rendering of or the failure to render health care services, where the trier of fact is a  
 12 jury, such jury shall not be instructed by the court with respect to the limitation on an award of  
 13 noneconomic damages, nor shall counsel for any party or any person providing testimony during  
 14 such proceeding in any way inform the jury or potential jurors of such limitation.

15       ~~[5]7. For purposes of sections 538.205 to 538.230, any spouse claiming damages for loss of~~  
 16 ~~consortium of their spouse shall be considered to be the same plaintiff as their spouse.~~

17       ~~[6]8. Any provision of law or court rule to the contrary notwithstanding, an award of~~  
 18 ~~punitive damages against a health care provider governed by the provisions of sections 538.205 to~~  
 19 ~~538.230 shall be made only upon a showing by a plaintiff that the health care provider demonstrated~~  
 20 ~~willful, wanton or malicious misconduct with respect to his actions which are found to have injured~~  
 21 ~~or caused or contributed to cause the damages claimed in the petition.~~

22       ~~[7]9. For purposes of sections 538.205 to 538.230, all individuals and entities asserting a~~  
 23 ~~claim for a wrongful death under section 537.080 shall be considered to be one plaintiff.~~

24       ~~[8]10. The limitations on awards for noneconomic damages provided for in this section~~  
 25 ~~shall be increased by one and seven-tenths percent on an annual basis effective January first of each~~  
 26 ~~year. The current value of the limitation shall be calculated by the director of the department of~~  
 27 ~~insurance, financial institutions and professional registration, who shall furnish that value to the~~  
 28 ~~secretary of state, who shall publish such value in the Missouri Register on the first business day~~  
 29 ~~following January first, but the value shall otherwise be exempt from the provisions of section~~  
 30 ~~536.021.~~

31       ~~[9]11. In any claim for damages under this chapter, and upon post-trial motion following a~~  
 32 ~~jury verdict with noneconomic damages exceeding four hundred thousand dollars, the trial court~~  
 33 ~~shall determine whether the limitation in subsection 2 of this section shall apply based on the~~  
 34 ~~severity of the most severe injuries.~~

35       ~~[10]12. If a court of competent jurisdiction enters a final judgment on the merits that is not~~  
 36 ~~subject to appeal and that declares any provision or part of either section 1.010 or this section to be~~  
 37 ~~unconstitutional or unenforceable, then section 1.010 and this section, as amended by this act and in~~  
 38 ~~their entirety, are invalid and shall have no legal effect as of the date of such judgment, and this act,~~  
 39 ~~including its repealing clause, shall likewise be invalid and of no legal effect. In such event, the~~  
 40 ~~versions of sections 1.010 and this section that were in effect prior to the enactment of this act shall~~  
 41 ~~remain in force."; and~~

42  
 43 Further amend said bill by amending the title, enacting clause, and intersectional references  
 44 accordingly.

45  
 46 THIS AMENDMENT SUBSTITUTES 1145H02.07H  
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